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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA and the
STATE OF CALIFORNIA ex rel.
ERIN HAYES and RICHARD PONDER,

Plaintiffs,

v.

COVIDIEN, INC., a corporation.,
Defendant.

CASE NO. C 14-1511 EDL

EX PARTE
ADMINISTRATIVE
MOTION TO RELATE CASES;
[PROPOSED ORDER]

FILED UNDER SEAL

NOTICE AND ADMINISTRATIVE MOTION; PROPOSED ORDER
C 14-1511 EDL

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[PROPOSED ORDER]

FILED UNDER SEAL

Pursuant to Local Rules 3-12 and 7-11, the United States files this Notice and Administrative Motion for the Court to notify the Court of a case just transferred from the Southern District of New York, *United States ex rel. Howerton v. Covidien, et al.*, C 15-0558 JCS, and for the Court to consider whether the transferred case is related to a case previously filed in this district, *United States ex rel. Hayes, et al. v. Covidien, Inc.*, C 14-1511 EDL. Because both the previously filed case and the transferred case remain under seal, this motion is being filed *ex parte* and is not being served on Defendant.

A. LITIGATION HISTORY

On April 1, 2014, this case was filed under the *qui tam* provisions of the Federal False Claims Act, 31 U.S.C. §§ 3729-2733. In this action, Relators Hayes and Ponder allege, *inter alia*, that Defendant (1) engaged in unlawful kickback schemes and (2) unlawfully marketed its endo-arterial products for off-label use. The United States is currently investigating these claims.

B. THE CASES SHOULD BE RELATED UNDER L.R. 3-12.

In the transferred complaint, Relator Shawnea Howerton alleges that Defendant Covidien paid kickbacks to physicians to induce the physicians to use Covidien's medical devices. The suit alleges that the kickbacks took the form of Covidien guaranteeing patient referrals to doctors for radiofrequency vein ablation procedures and defraying marketing costs in exchange for the physician's promise to exclusively use Covidien catheters for these medical procedures. The previously filed suit also alleges that Covidien paid kickbacks to physicians to induce the physicians to use Covidien's medical devices. Among the mechanisms by which relators in the present suit allege Covidien paid kickbacks to physicians was by creating "sham trainings" for a physician to lead but which were actually fabricated to conceal the physician's demand for allegedly unlawful payments from Covidien. The facts upon which the claims in the two cases are based are substantially similar, and the cases will be investigated simultaneously. It thus appears likely that there would be an unduly burdensome duplication of labor and expense if the second case is not related to the first. The criteria of Local Rule 3-12 are satisfied, and the United States respectfully requests that *United States ex rel. Howerton v. Covidien, et al.*,

C 15-0558 JCS, be related to *United States ex rel. Hayes, et al. v. Covidien, Inc.*,
C 14-1511 EDL.

Pursuant to the Local Rules, the United States is lodging this motion with Judge Laporte
and Judge Spero.

DATED: February 6, 2015

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PROPOSED ORDER

An Administrative Motion to Relate Cases has been filed. As the judge assigned to the earliest filed case below that bears my initials, I find that the more recently filed case that I have initialed below is related to the case already assigned to me, and such case shall be reassigned to me.

United States ex rel. Howerton v. Covidien, et al., C 15-0558 JCS

United States ex rel Hayes, et al. v. Covidien, C 14-1511 EDL

Counsel are instructed that all future filings in any reassigned case are to bear the initials of the newly assigned judge immediately after the case number.

ELIZABETH D. LAPORTE
United States Magistrate Judge